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Mit freundlichen Grüßen und freue ich mich auf weitere Zusammenarbeit.

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The European Roots of Hungarian Regulation of the Cartels Special Attention to the Foundation of Cartel Supervisory Public Authorities

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Abstract:

Society was fundamentally affected by the contemporary economic and political systems between the two world wars, and the law responded by regulating already existing, but not yet codified legal institutions. The result of the freedom of contract and association, the establishment of free trade was that members of economic life used every legal method available to take advantage of the current economic situation, and create corporations with the main purpose of limiting competition in order to optimise production and to increase prices and with it, profits. In this era, most European countries, including Hungary introduced cartel regulations. Hungarian regulations were mostly affected by Austrian and German cartel law edicts, and the main purpose of my essay is to provide a terse description of these.

Key words: codification, First World War, Austrian Koalitionsgesetz, German cartel decrees, Hungarian Cartel Act

The codification of cartel law in Europe was closely linked to the development of free competition and economic freedom, which also gave an impetus to companies' forming business alliances and to the legal regulation of this type of cooperation in the 19th century. It was jurisdiction that had to react first to the unfair conduct of companies and that had to control this problem. *"Cartels were formed by business companies with the purpose of making economic benefits, and most of the time their aims were totally selfish, and they completely ignored the interests of the consumers or of other entrepreneurs in the same trade. As a consequence of this, in many countries, business collaborations that tried to restrict economic competition did not have any judicial protection, and in some countries, they were clearly prohibited by penalties."*¹ Such regulation could be observed in France, where Section 419 of the Code Penal punished price regulation and any collusion aiming at that.² English courts decided case by case whether the operation of a cartel violated a law or not.³

Changes in the regulation of cartel issues were closely related to the rationalization of production and consumption. Cartels were seen as necessary part of business life that could not be excluded from everyday commercial life, and that could not be eradicated. As a result, European countries made efforts to regulate these new institutions of business life in an appropriate way. *"There are hardly any countries left, whose legislation would follow the old ideal of unlimited freedom of competition and would take a completely antagonistic stance against cartels. Cartels are not seen any more as formations that go against good morals simply by their essence. The legislation and judicature of nearly every country accepts the view that cartels can assist in the organisation of production and turnover, and that they can even prevent some production sectors from breakdown by regulating (restricting) production."*⁴

¹ Supported by János Bolyai Research Scholarship (BO/00198/18/9). DOBROVICS, Károly, *Kartel. A karteljog fejlődése és a magyar törvény előzményei*. [Cartel: The development of cartel law and antecedents to the Hungarian law], *Közgazdasági Értesítő*, (28) 1934/38, p. 13.

² FREEDEMAN, CHARLES E., *Cartels and the Law in France before 1914*, *French Historical Studies*, (15) 1988/3, pp. 462-478.

³ The English regulation was closely related to the legal regulation of the coal issue. TAN, ELAINE S., *Market Structure and the Coal Cartel in Early Nineteenth-Century England*, *The Economic History Review*, (62) 2009/2, pp. 350-365., MACGREGOR, D. H., *The Coal Bill and Cartel*, *The Economic Journal*, (40) 1931/157, pp. 35-44.

⁴ KÖHÁZI, Endre, *Külföldi karteltörvények*, [Cartel laws abroad], in: Dobrovics, Károly – Köhási, Endre, *Kartel, árelemzés, külföldi törvények*, [Cartel, price analysis, acts abroad], Monopol Könyvkiadó Vállalat, Budapest, 1938, p. 14. Unlike in European countries, agreements restricting competition were prohibited in the USA, which

After the First World War the economic situation of European countries had changed significantly, and together with that, consumer behaviour changed, too. This resulted in a crisis of agricultural and industrial production. In this setting, the way cartels were seen had changed considerably, too: “*cartels that were seen as immoral by the old ideology, and that were hardly tolerated, became desirable for economic life in many systems of legislation.*”⁵

For an in-depth understanding of the topic, it is important to be familiar with the European context. In this chapter, I would like to give a brief overview of the Austrian and German regulation, which had a great impact on Hungarian codification and consequently, they help us understand the Hungarian system.

Austrian cartel law is important for this topic because the public law systems of the two countries were tied together. The idea that an Act on competition law should be drawn up and introduced in Austria emerged already in the 19th century. In the so-called ‘Koalitions-gesetz’ passed on 7. April 1870 the grounds for invalidity of cartels within private law were regulated. These same regulations also amended the provisions of the Code of Criminal Procedure of 1803 on agreements harming the community. “*Even in these newest times, the official standpoint of the Austrian government was that although the Koalitions-gesetz of 1870 bears the characteristics of a Cartel Act, it has limited enforceability against cartels.*”⁶

Friedrich Kleinwächter, Austrian economist, warned about the problems concerning cartels, too. He studied how the ‘Children of necessity’ (Kinder der Not), that is cartels affected economy. Another Austrian legal scholar who discussed how cartels influenced economy, was Adolf Menzel. As an outcome of his investigations, he prepared a proposal in 1897, in which it was suggested that cartels be overseen primarily by ministers. The proposal, however, had never been turned into an Act.⁷

The Austrian cartel movement had a considerable impact on German cartel legislation around the turn of the century. In Germany, no criminal law provisions concerning cartels were issued. It was the courts (e.g. Reichsgericht) that first dealt with the cartel issue, and it was mostly in connection with questions of freedom of industry and freedom of contract.⁸ Robert Liefmann analyzed the problem of cartels from an economic point of view, with special attention paid to the realization of the freedom of competition.⁹ The first piece of legislation on cartels issued in Europe was the German cartel decree of 2nd November 1923, which was relied on by several European countries, among others, Hungary, too, when legislation on cartels was drafted. The decree defined what a cartel is, when a cartel agreement was null and void, and when the operation of a cartel endangered the interests of public economy and the common good. The decree also identified and regulated the roles and responsibilities of the Imperial

led to the acception of the Sherman Act in 1890. After the turn of the century, the American legislation that tried to restrict monopolies passed the Clayton Act and the Federal Trade Commission Act. SZILÁGYI, Pál – TÓTH, András: *A kartellszabályozás történeti fejlődése*. [The historical development of cartel regulation], Versenytükör (12) 2016, Különszám, pp. 6-7.

⁵ KÖHÁZI, 1938, p. 15.

⁶ BAUMGARTNER, NÁNDOR – MESZLÉNY, ARTUR: *Kartellek, trustök, keletkezésük – fejlődésük – helyzetük a gazdasági és jogrendszerben* [The birth, development and status of cartels and trusts in the system of law and economics], Grill Károly Könyvkiadóvállalata, Budapest, 1906, p. 311.

⁷ BAECK, PAUL L, *The Austrian Cartel Law*, The Business Lawyer, (13) 1958/4, pp. 798-800., MENZEL, ADOLF, *Die Kartelle und die Rechtsordnung*, Duncker & Humblot, Leipzig, 1902., RESCH, ANDREAS, *Industriekartelle in Österreich vor dem Ersten Weltkrieg*, Duncker & Humblot, Berlin, 2002.

⁸ BAUMGARTNER - MESZLÉNY, 1906, pp. 316-347., BLAICH, FRITZ, *Kartell- und Monopolpolitik im Kaiserlichen Deutschland*, Droste Verlag, Düsseldorf, 1973., WEBB, STEVEN B., *Cartels and Business Cycles in Germany 1880 to 1914*, Zeitschrift für die gesamte Staatswissenschaft, (138) 1982/2, pp. 205-224.

⁹ LIEFMANN, ROBERT, *Kartelle, Konzern und Trust*, Ernst Heinrich Moritz, Stuttgart, 1927. See: GRUNZEL, JOSEF, *Über Kartelle*, Verlag von Duncker & Humblot, Leipzig, 1902., TSCHIRSCHKY, SIEGFRIED, *Kartell und trust*, G. J. Göschen, Leipzig, 1911., PELLE, ANITA, *The German Roots of the European Community's Cartel Regulation: From a Historical and Theoretical Perspective*, Lampert Academic Publishing, Saarbrücken, 2011.

Minister of Commerce concerning the supervision of cartels. The decree ordered the setting up of the most important cartel supervisory board, that is, the Cartel court, and it provided for its composition and procedural rules.¹⁰

Subsequently, on 26th July 1930, the emergency decree on cartels was passed to impede price fixing that is detrimental to public economy.¹¹ The so-called Emergency Cartel Act of 1933 granted the German Minister of Commerce the right to gather companies into cartels after considering public interests, and to regulate the rights and responsibilities of the members. The authority of the minister was also clearly defined. *“As this right of the minister to interfere so deeply with economic life may easily cause damages, the Law stipulates that the Treasury shall not be held liable for any damage resulting from the application of the Law.”*¹² This Act introduced completely new provisions in the history of cartel supervision law.

The legal regulation of cartels went through changes the aim of which was to eliminate the paralyzing effects of cartels on economy, and to give *“the government the right to restrict free competition, in the future, if the conditions of public economy call for it, and to become actively involved in the passage of things by means of passing economic decrees. [...] It was the first time that the idea of positive intervention by means of regulating the market through state measures was put into practice along with strengthening the negative instruments of cartel supervision.”*¹³

According to Endre Kőházi, the main cosmic laws behind the regulation of cartels were economization and rationalisation.¹⁴ The matter of how much power and influence should be provided to economic organisations that can be considered reasonable and permissible in order to protect public interests was a constant issue for contemporary legislators. Because of this, the statement stands that the matter of cartels was a constant presence in economic life, governments and legislative bodies. In the first half of the 20th century, during the regulation of production and consumption, banishing cartels from economic processes was out of the question. This is why it is necessary to examine the European patterns behind the regulations of Hungary, which will clearly show how immoral cartel formations became tolerated economic organisations during the time period following World War I. This change was especially obvious in Germany's industry regulations. The main idea behind the Cartel Procedure Act of 1923 was tolerating cartels. However, the act of 1933 shifted to regulate compulsory cartels. *“It is only natural that the power a cartel may practice, on one hand, towards the common consumer by regulating prices, on the other, against fellow practitioners of the industry by overshadowing or excluding them from production was abused severely and led to sizeable injustices in the*

¹⁰ KESSLER, WILLIAM C., *German Cartel Regulation Under the Decree of 1923*, The Quarterly Journal of Economics, (50) 1936/4, pp. 680-693., *Verordnung gegen Missbrauch wirtschaftlicher Machtstellung vom 2. November 1923*) in: DOBROVICS - KÖHÁZI, 1938, 17-25. pp., KUHLMANN, OTTO, *Kartellbegriff und Genossenschaften*, Universitätsverlag von Robert Noske in Borna, Leipzig, 1930, pp. 5-18., JSAY, RUDOLF - TSCHIRSCHKY, SIEGFRIED, *Kartellverordnung*, Bensheimer, Mannheim, Berlin, Leipzig, 1925., LEHMANN, WILLI, *Grenzen der Kartellgerichtsbarkeit*, Buchdruckerei Julius Abel G. m. b. H., Greifswald, 1929., DENZEL, EBERHARD, *Mißbrauch der Kündigung unter besonderer Berücksichtigung des § 8 Kartellverordnung*, Buchdruckerei Hans Adler, Inh., Greifswald, 1936., BIRNBAUM, WALTHER, *Die Rechtsprechung des Kartellgerichts auf Grund des § 9 der Kartellverordnung im Vergleich zur Rechtsprechung der ordentlichen Gerichte*, Carl Heymanns Verlag, Berlin, 1930.

¹¹ *Verordnung der Reichspräsidenten zur Behebung finanzieller, wirtschaftlicher und sozialer Notstände. Vom 26. Juli 1930*) in: DOBROVICS - KÖHÁZI, 1938, pp. 17-25., HINDEN, JOSEF, *Die Stimmenhaltungsvorschriften im Kartell- und Konzernrecht*, Gedruckt im der Verlagsanstalt Heinr.&Lechte, Emsdetten, 1932.

¹² DOBROVICS - KÖHÁZI, 1938, p. 32.

¹³ DOBROVICS - KÖHÁZI, 1938, pp. 44-45., MARBURG, THEODORE F., *Government and Business in Germany: Public Policy toward Cartels*, The Business History Review, (38) 1964/1, pp. 78-101., NÖRR, KUNT WOLFGANG, *Law and Market Organization: The Historical Experience in Germany from 1900 to the Law Against Restraints of Competition*, Journal of Institutional and Theoretical Economics, (151) 1995/1, pp. 5-20.

¹⁴ DOBROVICS - KÖHÁZI, 1938, p. 12.

past and will continue to do so in the future.”¹⁵ This development tendency resulted in the need to regulate supervision and monitoring not only in the law of our country, but in international law, as well. The most vital task of any nation is the protection of public interests.

Paragraph No. 1 of the German cartel edict of 1923 stated that any contract or agreement that establishes an obligation in the matters of controlling production and circulation, the application of business conditions, the method of valorisation or price demand (for example, cartels) was only valid in written form. The Hungarian Cartel Procedure Law of 1931 also included this edict.

The German cartel edict established every condition that invalidates any contract or agreement. It was invalidated when the contract omitted submitting to the Cartel Court, or if its application methods endangered public well-being and public economy. In these cases, the Reichsminister could invalidate either certain parts or the whole contract, and had the power to ban its application; he could order that a copy of the contract should be submitted; he could decree that the party is allowed to denounce the contract at any given time, or withdraw.

According to the German edict, the biggest danger a cartel could mean to public economy and public well-being if it regulated production and circulation in a way that is not justified by economic reasons, raised prices or included compensations, regulated the freedom of consumption or sales.

The edict also regulated that any contract that fall under the effect of Paragraph No. 1 and the decrees established in Paragraph No. 5 must be submitted.

The Reich Minister of Economy had the power to suspend the execution of previously established dispositions, if the condition behind the establishment of the disposition was terminated afterwards.

The cartel edict regulated the Cartel Court, since it was the most important establishment in cartel control, and the Cartel Procedure Law of Hungary took over this decree, as well. Any time a renunciation ended in a debate, then the Cartel Court reached a verdict according to an interested party's request, which had to be submitted within two weeks after the delivery of the renunciation. Based on the contracts established in Paragraph No. 1 or the request, selling bonds was forbidden and no insulation or any other type of penalty could be meted out. Every time a permission endangered public economy or public well-being, it was denied. The edict also established the regulations on economic mobility, especially if a partner was deemed untrustworthy in the matters of trade services; if the business conditions or price formation methods of a company or a cluster of companies had the power to endanger public economy or public well-being. In these cases, the Cartel Court reached a verdict according to the edict of the Reichsminister. It was mandatory to issue every decree and instruction of the Cartel Court to the general public.

The Cartel Court was established alongside the imperial economic court, which had a chairman and four members. The Reichsminister appointed the chairman and his deputy, who had to fulfil the requirements necessary to become a judge. The assessors were appointed by the chairman of the imperial economic court.

The edict also recorded the jurisdiction of the Cartel Court. Its verdicts obligated every court and courts of arbitration, as well. Any legal battle that reached courts where the decision was based on an agreement that falls under the jurisdiction of the Cartel Court, the hearing had to be suspended until the Cartel Court reached a decision. Not to mention that the edict established when the Cartel Court had the power to mete out fines. Per the minister's request, the Castel Court could also write expert's reports.¹⁶

¹⁵ DOBROVICS - KÖHÁZI, 1938, p. 15.

¹⁶ DOBROVICS - KÖHÁZI, 1938, p. 15-25.

The minister regulated the lawsuits of the Cartel Court via decrees, and stated that the imperial economic court's rules of procedure apply there, as well. The Cartel Court made orders, and ruled over the meting out and payment of fees.¹⁷

The next milestone of the history of German cartel law was the appearance of the Cartel Necessity Edict on 26th June, 1930. The edict authorized the government to neutralize or suspend the execution of any agreement involving price formation; could forbid the application of any business condition that limits any given person's method of price formation, could forbid any action, especially any proposition that impaired the thrift of the circulation or production of a commodity. The imperial government could mandate that the participants of the contract could refrain from said contract if they entered into it under questionable circumstances. Before the aforementioned decrees were made, the imperial government had to listen to the involved economic circles, not to mention that it was obligated to take the sense of the imperial economic council. In cases where governmental decrees had an effect on multiple countries, then it had to involve the interested countries' governments in the decision-making process. Any party who disobeyed the decrees established in the edict, a fine could be meted out.¹⁸ Only after these was the executive edict on the annulment of price-binding was issued on 30th August, 1930.

In connection to this topic, the so-called compulsory cartel act of 1933 is the next somewhat relevant step, which serves as closure to the foundations of the development of German cartel law in the first half of the 20th century. Back in 1923, the cartel edict meant defence. However, in 1933, they changed about, and issued the compulsory formation of cartels. In order to regulate the market, the Reich Minister of Economy could organise companies into syndicates or similar corporations, and could also forcibly join them to already existing ones in order to protect public economy and public well-being. In order to fulfil this duty, the Reich Minister of Economy could regulate the rights and duties of the members. Even altering the already established agreement could only be done with his consent. The minister also practiced supervising and monitoring rights over these economic organisations. In order to ensure that the participants reach a peaceful solution, he could arrange negotiating hearings, and if rules were broken, the Cartel Court got the right to reach a decision.¹⁹

The first Hungarian Cartel Act regulated the Cartel Court too as a cartel supervisory institution. When the Hungarian legislators regulated the cartels they adopted the German Cartel Court but the jurisdiction was not similar.

Trends in economic theory came into focus that saw free competition as the foundation of public welfare. In passing the draft law, evaluating cartel agreements was significantly determined by the contemporary recognition that cartels could also have positive effects on the economy. Overproduction in the late 19th century resulted in significant price drops in certain areas of the economy, which led to companies posting losses and the economic crisis drastically reducing demand for goods, which was closely tied to changes in the labour market. *"With such enormous shifts in external circumstances, the state could not spare even one organising social force and needed to accept compacts among business operators, which promoted more balanced development in the economy."*²⁰ The most important aim in enacting the law was to put a halt to loopholes and legal uncertainty in cartel law.

¹⁷ DOBROVICS - KÖHÁZI, 1938, p. 26-27.

¹⁸ DOBROVICS - KÖHÁZI, 1938, p. 27-29.

¹⁹ DOBROVICS - KÖHÁZI, 1938, p. 30-37.

²⁰ The rationale for the bill on agreements to control business competition (Rationale for the bill) in Az 1927. évi január hó 25-ére összehívott országgyűlés nyomtatványai. Képviselőházi irományok. XXIII. k. [Printed matter for the session of Parliament called on 25 January 1927. Parliamentary documents (Vol. XXII)], Budapest, 1931, p. 370.

The rationale referred to World War I and the subsequent changes in international relations, which had an effect on the Hungarian economy as well. Economic uncertainty made price speculation possible, which was a form of exploitation among the cartels.

The bill on agreements to control business competition was submitted to Parliament on 23 January 1931 by parliamentary clerk Károly Csák, after it had been discussed by the justice, economics and transport committees.²¹ Debate began on the next sitting day, where the clerk introduced in detail why it was necessary to regulate cartelization.

Nor did the clerk make a secret of the fact that there were Members of Parliament who did not at all support the move to make regulating cartels into law because it stood in the way of the continuity and certainty of production, provided higher pay for workers and prevented the concentration of capital. After the devastating economic effects of the Treaty of Trianon, it became particularly important to promote industry. The *“old classical school of economics taught that the legitimacy of the economy puts a halt to all overextension because when some establishment or some grouping abuses economic power, competition bears fruit in that moment, outsiders come, and the one that has abused economic power is regulated.”*²² Hungary’s situation was completely different than that of other European countries. One could not simply adopt the full text of the German cartel decree literally, for example. Instead, the provisions of the bill had to be formed with the Hungarian conditions in mind, to which *“we have to add a plus sign and then insert the phrase ‘Treaty of Trianon’. It is in this unfortunate situation created by the treaty that we are economically free. However, this freedom is so restricted and so overwhelmed that, in terms of economics in particular, this freedom”* is worth less *“than that which we have lost.”*²³

It had to be decided what is permitted and what it is that qualifies as forbidden in cartel law, meaning no less than establishing supervision and inspection of cartels. In that regard, it was an especially important question whether the emphasis in the bill should be on prevention or judicial proceedings. The Hungarian bill supported prevention and focussed on government measures first and foremost, but it still established a Cartel Court in the event that administrative measures were not successful. One consequence of this was that the bill primarily regulated public cartel law, criminal law and pertinent procedural law. As regards the Cartel Court, the bill only recognised the *actio publica*. The bill was drafted in a period in which society was characterised by an anti-cartel mood. *“After all, the trend toward cartels finds satisfaction in price policy, in price dictatorship and in the creation of monopolistic situations. It thus works in opposition to someone. This price policy is very natural: what profits one person harms another.”*²⁴

In his comments, ministerial councillor and Member of Parliament Elemér Farkas highlighted that *“cartels are justified if their aim is protective and if they do not cross the boundaries of legitimate protection with their actions. In my view, the appearance of cartels is suggested by a protective and self-preserving instinct in industry. True, if I take this very clear and simple position, then the other truth also emerges that the consumer’s plight will never coerce industry.”*²⁵ In his opinion, courts were of outstanding importance in this situation. He made reference to the draft Code of Private Law, Sec. 6, which stated that *“on legal questions not regulated by law, the courts shall decide, taking into account the spirit of domestic law, general principles of law and conclusions drawn by legal scholars.”*²⁶ This provision established a

²¹ *Az 1927. évi január hó 25-ére hirdetett országgyűlés képviselőházának naplója*, 33. k. [Parliamentary Record for 25 January 1927 (Vol. 33)], Athenaeum Irodalmi és Nyomdai Részvénytársulat Könyvnyomdája. 1931, p. 22.

²² Parliamentary Record, p. 49.

²³ Parliamentary Record, p. 50.

²⁴ Parliamentary Record, p. 54. on the establishment and operation of the cartel court, see SZABÓ, István, *A kartellfelügyelet szervezete és hatásköre az 1931. XX. törvénycikk nyomán* [The organisation and jurisdiction of the cartel supervisory agency pursuant to Act XX of 1931], *Versenytükör II.* (12) 2016, Különszám, pp. 64–84.

²⁵ Comments by Elemér Farkas, Parliamentary Record, p. 71.

²⁶ Parliamentary Record, p. 71.

possibility of protection against “*cartel outgrowths*”. In his view, the codification of cartel law cannot be the goal of a criminal law “*expedition*”; appropriate means should have been found within the framework of civil law regulation. In the bill, the protection of public order and public morals was the primary element that even the Member supported because “*it is actually the only aspect which, if we fail to take it into consideration, then there are no morals, no legal scholarship and no economic progress.*”²⁷

The rules and cases of the so-called legal proceedings in the public interest in connection to cartels were introduced by Act XX of 1931.²⁸ The methodology of the cartel supervision offices belonged to this area of law, and it was practiced by the government, the specific ministries, the Royal Hungarian Legal Directorate, the Cartel Committee and the Price Analyzation Committee from the executive branch, and the regular, the elected and the Cartel Court from the judicial branch.²⁹

The Cartel Court was set up after the Hungarian Cartel Act came into effect, and it was reasoned by the statement of the Minister of Agriculture as follows. The “*measures which must be taken against a cartel should be objected to the consideration of a judge most of the times, so (...) the judicature of the Cartel Act could best be assured by a separate cartel court.*”³⁰

If an agreement or decision fell within the scope of Section 1 of the aforementioned Act, the Hungarian Royal Legal Directorate, on the instructions of the competent minister, could file a case at the Cartel Court.³¹ In the context of the agreement covered by the provision, jurisprudence raised the issue of the need to define the concept of cartel. For that reason, judicial practice defined what conduct falls within the scope of the Act on cartels.³²

²⁷ Parliamentary Record, p. 74.

²⁸ HARASZTOSI, KIRÁLY, Ferenc, *A kartel*. [The Cartel], Grill Károly Könyvkiadóvállalata, Budapest, 1936, p. 510.

²⁹ *A karteltörvény és a Kartelbizottság teljesíteni fogják hivatásukat*, [The Cartel Act and the Cartel Commission will successfully perform their duties], *Kartel Szemle*, (1) 1932/1, p. 1. *Összhangot kell teremteni a Kartelbizottság és az Árelemző Bizottság munkája között*, [Harmony must be created between the work of the Cartel committee and the Price Analyzation Committee], *Kartel Szemle*, (1) 1932/1, pp. 1-2.

³⁰ The statement of the Minister of Agriculture (57749/29. VIII-3.). The documents of the Cartel Committee can be found in the files of the Ministry of Agriculture (hereinafter: FM) in the Hungarian National Archives indexed as: Hungarian National Archive (hereinafter: MNL) K-184. 1933. 41. 30061/35309. KELEMEN, Sándor, *A megalkotandó kartelbíróóság szerepéről*. [On the role of the future Cartel Court], *Kereskedelmi Jog*, (28) 1931/2, pp. 32-34. *A Kurián ma megalakult a kartelbíróóság*, [The Cartel Court was set up today at the Curia], *Budapesti Hírlap*, 6 Marc 1932. p. 17.

³¹ Act XX. of 1931 on Agreements governing competition (the Hungarian Cartel Act), Section 1. The aforementioned Act included the following provision concerning cartel agreements. “*Any agreement or decision imposing an obligation to restrict or otherwise regulate competition in terms of the production, turnover or price development of a particular commodity (cartel and any other formation with a similar aim) will only valid if it is laid down in writing. The same applies for agreements and decisions amending or modifying the original agreement or decision.*” See Sections 1-2 of Decree 5381/1931. Bank cartels and insurance cartels were removed from the scope of the Act. The committee held that the Cartel Act was not applicable to the transport cartel either. MNL. K-184. 1933. 41. 30060/92488. As a preliminary to the regulation of cartels, see The statement of the Minister of Agriculture (57749/29. VIII-3) issued on the request of the Minister of Justice. MNL. K-184. 1933. 41 30061/ 35309.; See more on the Cartel Court in: KELEMEN, Sándor, *Miért nem alkalmas a karteltörvényjavaslat jelenlegi formájában, a kartelkérdés szabályozására?* [Why is the current bill on Cartel Law not suited for regulating cartel issues?] Budapest 1931., RANSCHBURG, Nándor, *A Karteltörvény hatálya alá tartoznak-e a márkás cikkek árvédő megállapodásai?* [Do agreements on price protection between companies producing branded goods fall under the scope of the Cartel Act?], Budapest, 1934. pp. 14-16., 50., 53.-54., SZENTE, Lajos, *A karteljavaslat*, [The bill on cartels], *Kereskedelmi Jog*, (28) 1931/1, p. 12.

³² Unfortunately, most of the Cartel Court’s documents in the Hungarian National Archives were lost together with the documents of the Ministry of justice. As a result, mainly court decisions, and particularly cartel court decisions published in secondary sources will be discussed in this chapter. In the fine case against Dunavölgyi Rt. and co, The Cartel Committee did not find the cartel agreement between The Vágó Brothers Rt. and the Hungarian Keményfaipari Rt. unlawful and did not find it necessary to enforce retaliatory measures previously decided about “*because of the very limited amount of production the said factories were engaged in.*” MNL. K-184. 1937.

The definition of common good and public interests was one of the main concerns of the legal institutions which regulated cartels in Hungary too. The works of Ferenc Harasztosi Király should be highlighted among other literary sources, which stated that *“the state must establish a public law system for cartels, which ensures that the cartel disagreements of economic life take place within a framework which ensures that they do not endanger the interests of public economy and of common good.”*³³

In this respect, we have to highlight the Cartel Committee's first statement of principle (on business isolation, boycott or exclusion).³⁴ This statement – referring to Section 6 of the Cartel Act – established that isolation is against the common good and the public economy because *“isolation not only causes economically justifiable losses, but is, in fact, capable of destroying its [the isolated company's] complete economic existence.”*³⁵ In this context, the Cartel Committee also examined the validity of the cartel contracts containing the stipulations of isolation. The Cartel Committee only agreed to enforce them if there were *“reasons especially significant and relevant to the public”*.³⁶ According to the Cartel Committee, *“the emphasis in the Act is not so much on private, but on public interests.”*³⁷ The committee referred to the justification of Act V of 1923: *“The categorical imperatives of morals must also be enforced during conflicts in the fields of commerce and industry, if one does not want to set individual selfishness loose on trade.”*³⁸ Both fair competition and cartel regulation must respect the common good.³⁹ The Hungarian Curia also declared in its decision IV. P. 4936/1927 that any contract which is against public interests and good morals should be considered null and void.⁴⁰

A legal action in the public interest could be filed at the Cartel Court if an agreement, or an application of a regulation was against the Cartel Act or against proper ethics or common good.⁴¹ In the action, the minister was entitled to request the following: the court should dissolve a cartel formed by such agreement or regulation, and impose a fine if it continues functioning. The minister could also ban the performance of the agreement or regulation, including the termination of the cartel's activities, subject to the imposition of a fine.⁴² An action in the public interest, which was introduced by the Cartel Act, could be brought by any public

30061/35309. 86293. See: Ödön Kuncz's argument in his expert opinion MNL. K-184. 1937. 30061/35309. 86293.

³³ HARASZTOSI, KIRÁLY, 1936, p. 512.

³⁴ MNL. K-184. 1933. 30061/35309. 92488. See the letter of the Minister of Agriculture dated on 27th November 1933., in which he informed the Minister of Commerce about a decision of principle.

³⁵ The Cartel committee wished to decide about this individually in each case. RANSCHBURG, 1935, p. 47. The Cartel committee dealt with the interpretation of this section of the Act, too. The presenter referred to the relevant provisions of the German Cartel Act. MNL. K-184. 1933. 41.31960/92488. *A kartel javaslat: a Magyar Gyáriparosok Országos Szövetségének előterjesztése az országgyűlés tagjaihoz*, [The Bill on Cartels: the proposition of the National Association of Hungarian Industrialists to the Parliament.], Budapest, 1931, pp. 33., 40-41.

³⁶ MNL. K-184. 1933. 41. 31260/92488.

³⁷ MNL. K-184. 1933. 41. 31260/92488.

³⁸ MNL. K-184. 1933. 41. 31260/92488.

³⁹ SZEGŐ, Izsó, *A tisztességtelen verseny. (Az 1923. évi és az 1933. évi XVII. t-c. magyarázata.)* [The unfair competition. An explanation of Act XVII of 1923 and 1933], The author's own edition, Budapest, 1936, pp. 34-36.

⁴⁰ MNL. K-184. 1933. 41. 31260/92488.

⁴¹ DOBROVICS, Károly, *Kartelizmeretek*, [The basics of Cartel Law], „Monopol” Könyvkiadó Vállalat Kiadása, Budapest, 1937, p. 126., Lajos Szente, lawyer, reviewed the conditions of filing an action of public interest. SZENTE, Lajos, *A karteljavaslat*. [The bill on cartels] *Kereskedelmi Jog*, (28) 1931/2, pp. 11-12., GAVALLÉR, Lajos, *A közérdekű per*, [The action in public interest], *A kartel*, 1932/1, p. 6.

⁴² The Cartel Court determined the amount of the fine in the warrant of execution. RANSCHBURG, Nádor, *Karteljog kartelszervezet. A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX-ik törvénycikk magyarázatával és végrehajtási rendeletekkel*, [Cartel Law, Cartel organisation. Act XX. of 1931 on Agreements governing competition with its explanations and enforcement regulations], Budapest, Iparjogvédelmi Egyesület, 1931, p. 100.

authority or private party. The action had to be filed at the Minister of Commerce by submitting the available evidence.⁴³ Before filing the legal action, the minister could ask for a second opinion from the Cartel Committee, but it was not compulsory. However, if a public office or authority filed the claim, the ministry usually turned to the Cartel Committee for their opinion.

The administrative authority exercised only the right of initiative in the procedure, after which the court did in fact take action in the cases. The authority could participate in the legal action only as a litigant. This was fundamentally linked to ensuring the guarantees of judicial independence and those of the administration of justice, not to mention respecting basic rights and freedoms.⁴⁴

In a lawsuit based on a legal action of public interest, the court could order the dissolution of the cartel, the termination of its operations, the prohibition of the implementation of an agreement or decision, or the termination of a particular activity or conduct. The Act clearly stated what legal measures the government could impose within the scope of its power. This meant that no court decision was needed to enforce these decrees. Those measures could be imposed by the minister only if the agreement or decision relating to the cartel jeopardised the interests of economics and the common good, particularly, if it regulated the turnover in the production of goods or the formation of prices for consumers in such a way that the interests of the entrepreneurs or the manufacturers were harmed.

It was within the jurisdiction of the ministry to examine the case, and, if it was deemed necessary, the ministry could request the disclosure and clarification of data, and submission of documents. With the participation of a commissioned emissary, it could examine the business conduct and business management of the cartel concerned; in addition, it could consult the books and other documents. It could also question the members and the employees. If the Ministry was of the opinion that the cartel's activity should be terminated, the Ministry could attempt to resolve the dispute peacefully with the parties concerned through negotiation. If this procedure did not lead to any results, the Ministry could make a proposal to the government to withdraw the tax and tariff concessions granted to the cartel and to exclude the cartel from public contracts. With these measures in the field of industrial police and transport rates, the Ministry sought to ban the cartel from continuing its conduct which was harmful to the common good.⁴⁵ On a proposal from the Minister of Commerce, the government could introduce these measures even if they did not meet the specific conditions laid down in other Acts.⁴⁶

In the event that the Ministry initiated the withdrawal of an official permit without which the cartel would not have been able to pursue its operational activities, the case had to be brought to the court. The Ministry could also propose to the government to amend or abolish the duty rates laid down in the customs tariff. There is an archived example for the latter. On 12 December 1933, Alkaloida Vegyészeti Gyár Rt. sent a letter to the Royal Hungarian Central Customs Directorate, in which they asked "*to import morphine derivatives and their salts duty-free against the quantities of morphine sent abroad for preparation or conversion.*"⁴⁷ If economic conditions became unfavourable, and everything else failed, the ministry could turn

⁴³ The literature refers to the Minister of Economics. In my opinion, it is more appropriate to refer to a Minister of Commerce, as in the studied period this was the official name of the position, up until 1935. Under the second Gömbös government, on 1st August 1935, ministry was split into two, and a separate Ministry of Industry and a Ministry of Commerce and Transportation were formed. Thereafter, cartel cases belonged to the Ministry of Industry. In: *Magyar Kormányprogramok 1867-2002*, [Programs of Hungarian Governments 1867-2002], I. kötet, Magyar Hivatalos Közlönykiadó, Budapest, 2004, p. 632.

⁴⁴ It essentially meant the economic freedom of movement of the interested parties. Reference: MNL. K-184. 1933. 30061/35309. 35309.

⁴⁵ This intention was reflected in the proposal of the Minister of Agriculture, too. MNL. K-184. 1933. 30061/35309. 35309.

⁴⁶ HARASZTOSI, KIRÁLY, 1936, p. 513.

⁴⁷ MNL. K-184. 1933. 30061/35309. 92818.

to the Cartel Court.⁴⁸ In the following sections, first, procedural rules of the Cartel Act will be outlined, then the litigation law relating to cartels, in particular the ones in civil law will be described in more detail, and finally, the related and available case law will be presented.

The justification of the Hungarian Cartel Act highlighted the fact that the operation of cartels affects a wide spectrum of the society, mainly people working in industry. Procedures against cartels did not only have an effect on the members of the given cartel and their business partners, but on the entire industrial branch as well. This is the reason why the legislator considered it necessary to investigate certain cartel cases more thoroughly. The Hungarian ministry always had to act in accordance with public interest. That is why the national committee was introduced whose main task was to issue expert's reports.⁴⁹

According to the proposal made at the Inter-Parliamentary Union's conference held in 1930, every state should establish a Cartel Committee, independent from the government. The Cartel Committee would represent the interests of consumers and employers, carry out investigations and publish the results of such investigations.

We can read about several organisations in European Cartel Law with similar functions. For example, in Bulgaria in the act adopted on 16 December 1931 on the control of cartels and monopoly prices; and in Czechoslovakia in Act No. 141 adopted on 12 July 1933 on cartels and private monopolies. Sweden decided to establish a separate authority within the framework of the act adopted on 16 July 1925 on investigations of monopolistic companies and mergers; while in Spain a committee was introduced for the same purpose according to the act on the regulation of national production and introduction of the committee, adopted on 3 December 1926. Also, Denmark established its own committee according to the act adopted on 28 April 1931. In Norway, such a supervisory institution was organised as a separate council according to the act adopted on 12 March 1926 (on the supervision of restrictions on competition and price abuses), in Belgium according to the royal Decree No. 62 adopted on 13 January 1935 (on the institution for economic regulation of production and sales), in the Netherlands (permanent committee of the economic council) according to the act adopted on 24 May 1935 (on declaring entrepreneurship contracts binding or non-binding), and in Romania in the Cartel Decree adopted on 8 May 1937.⁵⁰

In conclusion, we can say that the Hungarian government established supervisory public authorities that greatly influenced the operation of cartels. We can have observed the same situation in Europe when the states regulated the cartels. The Hungarian legislators' attention was paid to the Austrian and German cartel regulations mostly. This is the reasons why the Cartel Court and Cartel Committee could become the most significant supervisory factors in cartel cases in the 20th century.

⁴⁸ Cartel Act, Section 6. RANSCHBURG, 1931, pp. 100-101.

⁴⁹ DOBROVICS, Károly, *A kartellek helyzete és működése Magyarországon*, [The situation and operation of cartels in Hungary], Hellas-nyomda rt. Budapest, 1934, p. 131-132. STIPTA István, *A gazdasági versenyt szabályozó megállapodásokról szóló 1931. évi XX. tc. hazai előzményei*. [The Antecedents of Act XX. of 1931 on Agreements regulating Economic Competition in Hungary]. Versenytükr, (12), 2016. Különszám, p. 53-63.

⁵⁰ DOBROVICS, Károly – KÖHÁZI Endre: *Kartell, árelemzés, külföldi törvények*, [Cartel, price analysis, foreign law], Monopol Könyvkiadó Vállalat, Budapest, 1938, pp. 57-201.